

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOSEPH PATRICK LOGAN,
Appellant.

No. 2 CA-CR 2014-0149
Filed October 16, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County

No. CR20131412001

The Honorable Scott Rash, Judge

AFFIRMED AS CORRECTED IN PART

COUNSEL

West, Elsberry, Longenbaugh & Zickerman, PLLC, Tucson
By Anne Elsberry
Counsel for Appellant

STATE v. LOGAN
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Judge Espinosa and Judge Vásquez concurred.

M I L L E R, Presiding Judge:

¶1 Following a jury trial, appellant Joseph Logan was convicted of theft of means of transportation and possession of drug paraphernalia. The trial court found that Logan had one historical prior felony conviction and sentenced him to concurrent, minimum and presumptive terms of imprisonment, the longer of which is 4.5 years, with 376 days' credit for time served. Counsel has filed a brief citing *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting she has reviewed the record but found "no arguable, meritorious issues" to raise on appeal.¹ She asks this court to search the record for fundamental error. Logan has not filed a supplemental brief.

¹We note that counsel failed to strictly comply with *Clark*, despite asserting her brief is filed pursuant to that case. *Clark* requires that, upon reviewing a defendant's case and finding no arguable issue for appeal, counsel should file an *Ander's* brief containing "a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record." *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97. Although counsel provided a summary of the relevant procedural history in this case, there is no recitation of the facts supporting the conviction that are sufficiently detailed to demonstrate she thoroughly reviewed the record. Nonetheless, we reviewed the record and are satisfied that no arguable issues exist. We recommend counsel more thoroughly demonstrate compliance with *Clark* in the future. We also note that counsel inaccurately states in the opening brief that Logan is appealing "from his convictions and sentences for three counts of possession of a deadly

STATE v. LOGAN
Decision of the Court

¶2 Viewed in the light most favorable to sustaining the jury's verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that during a traffic stop in March 2013, Logan was found driving a truck that had been reported as stolen. "[T]here were some wires that were hanging down from the dash"; the ignition, which "look[ed] like it had been pried out," was found in the passenger compartment of the vehicle; and, needle-nose pliers were found on the seat next to Logan. Additionally, during a police inventory of the vehicle, officers discovered "a glass meth pipe." We conclude ample evidence supported the jury's findings of guilt, *see* A.R.S. §§ 13-1814(A)(5), 13-3415(A), and the sentences imposed, *see* A.R.S. § 13-703(B)(2), (I).

¶3 The sentences were imposed after a hearing to determine Logan's status as a repetitive offender. As to both counts, the trial court found one historical felony conviction. The written judgment, however, shows both offenses as "nonrepetitive," which we correct to show as repetitive. *See State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983) ("Where there is a discrepancy between the oral sentence and the written judgment, the oral pronouncement of sentence controls.").

¶4 Pursuant to our obligation under *Anders*, we searched the record for fundamental, reversible error and found none. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985). Therefore, we affirm Logan's convictions and sentences but correct the sentencing order to show both counts as repetitive rather than nonrepetitive.

weapon by a prohibited possessor." We further recommend counsel carefully review her briefs before submitting them in the future.